

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | |
| Table of Allotments, |) | |
| FM Broadcast Stations. |) | |
| (Dickens, Texas) |) | MB Docket No. 02-258 |
| |) | RM-10500 |
| |) | |
| (Floydada, Texas) |) | MB Docket No. 02-259 |
| |) | RM-10501 |
| |) | |
| (Freer, Texas) |) | MB Docket No. 02-260 |
| |) | RM-10502 |
| |) | |
| (Ozona, Texas) |) | MB Docket No. 02-261 |
| |) | RM-10503 |
| |) | |
| (Rankin, Texas) |) | MB Docket No. 02-262 |
| |) | RM-10504 |
| |) | |
| (Safford, Arizona) |) | MB Docket No. 02-263 |
| |) | RM-10498 |
| |) | |
| (San Diego, Texas) |) | MB Docket No. 02-264 |
| |) | RM-10505 |
| |) | |
| (Westbrook, Texas) |) | MB Docket No. 02-265 ✓ |
| |) | RM-10556 |

NOTICE OF PROPOSED RULEMAKING

Adopted: August 21, 2002

Released: August 30, 2002

Comment Date: October 21, 2002

Reply Comment Date: November 5, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a multiple docket *Notice of Proposed Rule Making* setting forth eight separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. The petitioner for each proposal has stated that it will apply for each requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Information Center will maintain a separate file for each docket. As

discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 02-258; RM-10500

Petitioner: Maurice Salsa
5615 Evergreen Valley Drive
Kingwood, Texas 77345

Proposal: Allot Channel 294A at Dickens, Texas, as that community's first local aural transmission service.¹

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|-------------------------|
| Dickens, Texas | ----- | 294A, 240A ² |

Coordinates: 33-40-43 NL and 100-45-00 WL

Additional Information: This allotment requires a site restriction of 10.1 kilometers (6.3 miles) northeast to avoid a short-spacing to the license site of Station KEJS, Channel 293C2, Lubbock, Texas.

FCC Contact: Rolanda F. Smith (202) 418-2180

B. MB Docket No. 02-259; RM-10501

Petitioner: Linda Crawford
3500 Maple Avenue #1320
Dallas, Texas 75219

Proposal: Allot Channel 255A at Floydada, Texas, as that community's second local aural transmission service.³

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|-----------------|
| Floydada, Texas | 291C3 | 255A, 291C3 |

Coordinates: 34-00-54 NL and 101-18-29 WL

¹ Dickens, Texas is an incorporated community with a 2000 U.S. Census population of 332 persons. Dickens is the county seat of Dickens County. Dickens has its own mayor, post office, volunteer fire department, city hall, and a number of local churches.

² We note that on September 26, 2001, a *Notice of Proposed Rule Making*, MM Docket No. 01-284, was adopted proposing the allotment of Channel 240A at Dickens, Texas. See *Taos, New Mexico, McCamey, Texas, Dickens, Texas, and Hamlin, Texas*, 16 FCC Rcd 17891 (2001).

³ Floydada is an incorporated community and the county seat of Floyd County. Floydada has a 2000 U.S. Census population of 3,676 persons. Floydada also has its own mayor, post office, school system, county court house, city hall, fire department, and a number of local churches.

Additional Information: This allotment requires a site restriction of 4.3 kilometers (2.7 miles) northeast to avoid a short-spacing to the license site of Station KQBR, Channel 258C1, Lubbock, Texas.

FCC Contact: Rolanda F. Smith (202) 418-2180

C. MB Docket No. 02-260; RM-10502

Petitioner: Linda Crawford
3500 Maple Avenue # 1320
Dallas, Texas 75219

Proposal: Allot Channel 271A at Freer, Texas, as that community's third local aural transmission service.⁴

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|------------------|
| Freer, Texas | 240A, 288A | 271A, 240A, 288A |

Coordinates: 27-58-35 NL and 98-35-05 WL

Additional Information: This allotment requires a site restriction of 11.0 kilometers (6.8 miles) north to avoid a short-spacing to the license site of Station KILM, Channel 271C2, Raymondville, Texas. Since Freer is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

FCC Contact: Rolanda F. Smith (202) 418-2180

D. MB Docket No. 02-261; RM-10503

Petitioner: Robert Fabian
4 Hickory Crossing Lane
Argyle, Texas 76226

Proposal: Allot Channel 289C1 at Ozona, Texas, as that community's second local aural transmission service.⁵

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|----------------------------------|
| Ozona, Texas | 232A | 289C1, 275C3 ⁶ , 232A |

⁴ Petitioner states that Freer is an incorporated community with a 2000 U.S. Census population of 3,241 persons. Freer has its own mayor, post office, school system, fire department, and city hall.

⁵ In support of its proposal, Petitioner states that Ozona is a census designated place and is the county seat of Crockett County. Ozona has a 2000 U.S. Census population of 3,436 persons. Ozona has its own post office, fire department, school district, and a number of local churches.

⁶ On June 26, 2002, a *Notice of Proposed Rule Making*, MB Docket No. 02-170, was adopted proposing the allotment of Channel 275C3 at Ozona, Texas.

Coordinates: 30-25-54 NL and 101-27-42 WL

Additional Information: This allotment requires a site restriction of 39.8 kilometers (24.7 miles) southwest to avoid a short-spacing to the application site of a New FM station, Channel 289C2, Mason, Texas. Since Ozona is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

FCC Contact: Rolanda F. Smith (202) 418-2180

E. MB Docket No. 02-262; RM-10504

Petitioner: Robert Fabian
4 Hickory Crossing Lane
Argyle, Texas 76226

Proposal: Allot Channel 229C3 at Rankin, Texas, as that community's first local aural transmission service.⁷

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|---------------------------|
| Rankin, Texas | ----- | 229C3, 273C1 ⁸ |

Coordinates: 31-11-24 NL and 101-48-39 WL

Additional Information: This allotment requires a site restriction of 12.6 kilometers (7.8 miles) east of Rankin, Texas. Since Rankin is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

FCC Contact: Rolanda F. Smith (202) 418-2180

F. MB Docket No. 02-263; RM-10498

Petitioner: Graham County FM Associates
c/o Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Proposal: Allot Channel 246C3 at Safford, Arizona, as that community's second local aural transmission service.⁹

⁷ Rankin is an incorporated community with a 2000 U.S. Census population of 800 persons. Rankin has its own mayor, post office, volunteer fire department, school district, and a number of local churches.

⁸ On August 14, 2002, a *Notice of Proposed Rule Making*, MB Docket No. 02-253, was adopted proposing the allotment of Channel 273C1 at Rankin, Texas.

⁹ Safford is an incorporated community listed in the 2000 U.S. Census with a population of 9,232 persons. Safford is also the county seat of Graham County.

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|-----------------|
| Safford, Arizona | 231C1 | 246C3, 231C1 |

Coordinates: 32-50-02 NL and 109-42-25 WL

Additional Information: This allotment is at city reference coordinates and requires no site restriction. Since Safford is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

FCC Contact: Rolanda F. Smith (202) 418-2180

G. MB Docket No. 02-264; RM-10505

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 273A at San Diego, Texas, as that community's second local aural transmission service.¹⁰

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|-----------------|
| San Diego, Texas | 290C3 | 273A, 290C3 |

Coordinates: 27-46-29 NL and 98-20-04 WL

Additional Information: This allotment requires a site restriction of 9.6 kilometers (5.9 miles) west to avoid a short-spacing to the license site of Station KNDA, Channel 275C2, Alice, Texas. Since San Diego is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

FCC Contact: Rolanda F. Smith (202) 418-2180

H. MB Docket No. 02-265; RM-10556

Petitioner: Maurice Salsa
5615 Evergreen Valley Drive
Kingwood, Texas 77345

Proposal: Allot Channel 272A at Westbrook, Texas, as that community's first local aural transmission service.¹¹

¹⁰ Petitioner states that San Diego is the county seat of Duval County. San Diego is an incorporated community with a mayor and city council. It has a 2000 U.S. Census population of 4,753 persons. San Diego also has its own independent school district, fire department, city hall, post office, and Chamber of Commerce. Duval County has its courthouse and sheriff's office in San Diego.

¹¹ Westbrook is an incorporated community with a 2000 U.S. Census population of 203 persons. Westbrook has its own mayor, post office, volunteer fire department, school district, city hall and several local churches.

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|----------------|-----------------|
| Westbrook, Texas | ----- | 272A |

Coordinates: 32-22-24 NL and 101-04-58 WL

Additional Information: This allotment requires a site restriction of 6.8 kilometers (4.2 miles) west to avoid a short-spacing to the license site of Station KFZX, Channel 271C, Gardendale, Texas. Since Westbrook is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

FCC Contact: Rolanda F. Smith (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **October 21, 2002**, and reply comments on or before **November 5, 2002**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as listed above for each docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹²

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight

¹² See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.